

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

MICHAEL A. LEE, JR.,

Plaintiff,

v.

Case No. 22-cv-0930-bhl

GINA AMBASAN,

Defendant.

DECISION AND ORDER

Plaintiff Michael Lee, who is incarcerated and representing himself, is proceeding on an Eighth Amendment claim based on allegations that Defendant sexually assaulted him while she was a correctional officer. On September 2, 2022, the Court screened the complaint and ordered that, pursuant to an informal service agreement between the Wisconsin Department of Justice (DOJ) and this Court, the complaint and screening order be sent to the DOJ for service on Defendant. Dkt. No. 8. Less than a week later, on September 8, 2022, DOJ informed the Court that it would not accept service on Defendant's behalf. Dkt. No. 9. Accordingly, the next day, the Court transmitted a waiver of service packet to the U.S. Marshals Service for service upon Defendant. Defendant did not timely execute the waiver of service, so on December 20, 2022, the Court transmitted a summons service packet to the U.S. Marshals Service for service upon Defendant. On January 4, 2023, the marshals filed a proof of service form noting that the summons and complaint had been left at Defendant's residence with her mother. Dkt. No. 13.

On February 17, 2023, after Defendant's time to respond to the complaint had expired, Lee filed a motion for default judgment. Dkt. No. 16. On March 3, 2023, pursuant to Fed. R. Civ. P.

55(a), he filed an affidavit showing that Defendant had “failed to plead or otherwise defend.” As the rule requires, the clerk entered default on March 7, 2023. A few weeks later, on March 24, 2023, the Court entered a notice of hearing on Lee’s motion for default judgment. Dkt. No. 22. As a courtesy to Defendant, who still had not appeared, the Court mailed a copy of the notice to the address where she had been served. On April 12, 2023, attorney Thomas Devine filed a notice of appearance on behalf of Defendant. Dkt. No. 23. Defendant also filed a motion to adjourn the hearing scheduled for April 19, 2023, a motion to set aside the default, and an answer in response to Lee’s complaint. Dkt. Nos. 24-26.

In light of Defendant’s motion to set aside the default and her sworn statement that she “never had any sexual contact with the plaintiff and that all the allegations in the Complaint are not true,” Dkt. No. 28, the Court **GRANTS** Defendant’s motion to adjourn the hearing scheduled for April 19, 2023, Dkt. No. 24. Lee may respond to Defendant’s motion to set aside the default, Dkt. No. 25, by **May 5, 2023**; Defendant may file a reply in support of her motion by **May 19, 2023**.

SO ORDERED at Milwaukee, Wisconsin on April 14, 2023.

s/ Brett H. Ludwig

BRETT H. LUDWIG
United States District Judge